

Response to the Request of the Inter-American Commission on Human Rights for Supplemental Information on the Petition by Border Action Network in Relation to Victims of Anti-Immigrant Activity and Vigilante Violence in Southern Arizona

Petition No. P-478-06

August 19, 2005

The Border Action Network (hereinafter “BAN”), the petitioner in this matter, hereby responds to the request of the Inter-American Commission on Human Rights , dated July, 19, 2005, for supplemental information in regard BAN’s petition of April 28, 2005. Specifically, the Commission requested information on the following:

1. The identity and circumstances of each alleged victim in the petition, including the timing and nature of events concerning each alleged victim and efforts that have been made to raise their complaint with authorities.
2. The status of any civil proceedings pursued by each alleged victim, or where such proceedings have not been pursued, the reasons for not doing so.

The petitioner is please to provide detailed information pertinent to these points, which it does below. As a preliminary matter, however, some observations may be useful to clarify aspects of BAN’s petition.

The Nature of the Victims in this Case

The petition in this case seeks to hold the United States responsible for failing to adequately address a widespread pattern of violent and intimidating behavior by several organized groups and individuals who have been and continue to target immigrants crossing the United States–Mexico border into southern Arizona. These organizations and individuals, commonly referred to as “vigilantes,” have committed and conspired to commit violent and threatening crimes against immigrants, and have done so with impunity. Thus, as stated by the petition,

the victims are immigrants—principally from Mexico, but also from other countries of Latin America—who have suffered specific physical abuses at the hands of vigilantes in southern Arizona and whose physical and psychological well-being have been adversely affected by the failure of the United States to prevent and remedy these abuses against them; and other immigrants who are likely to suffer similar harm in the future.

Petition, at para.6. The victims also include U.S. citizens who have suffered similar or related abuses. Id. at para 8.

Given the nature of the pattern of human rights violations complained of, it is impossible to name all the victims. Although in its petition and this document the

petitioner names many of the victims, it is important to stress that the victims are not just those who have been named. They also are those many other unidentified persons who have suffered abuses at the hands of vigilantes as well as those who are likely to suffer such abuses in the future if the United States continues to neglect the situation.

The Inter-American Commission has not hesitated to admit and adjudicate cases in which large classes of individuals are suffering common patterns of human rights abuse even though, as here, it is impossible to name all of the present and future victims. The Commission has understood that to do so would be to turn its attention away from many of the most egregious situations of human rights abuse and to not address those situations in an adequately comprehensive way. Thus, for example, the Commission admitted and ultimately decided in favor of a petition submitted by several nongovernmental organizations on behalf of “unnamed Haitian nationals” to address the United States policy of “interdicting” at sea Haitian refugees, a policy that affected, much like here, a broad indeterminate class. *See* Case 10.675, Inter-Am. C.H.R. Report 28/93, para. II.1 (admissibility decision of Oct. 13, 1993). Only one individual victim was identified by the Commission in its decision on admissibility, *id.* at para.V.I.8, yet the Commission rightly proceeded to address the alleged human rights violations as they affected all actual and potential victims. Here, the Commission should similarly address the human rights violations of all actual and potential victims of U.S. neglect of vigilante abuse.

The Exception to the Exhaustion of Domestic Remedies

The petitioner has alleged that the exception to the exhaustion of domestic remedies provided in Article 31(1) of the Commission’s Rules of Procedure applies in this case, since the crux of the complaint is that the United States has failed in its responsibility to prosecute criminal behavior and prevent such future behavior.

The Inter-American Commission has always maintained that in the case of crimes of public action, and even in those which may be prosecuted by a private actor, it is not valid to demand exhaustion of domestic remedies of the victim or the victim’s relatives, for the state has a duty to maintain public order, and therefore it has an obligation to set the criminal law system into motion and to process the matter until the end. In other words, the obligation to investigate, prosecute, and punish the persons liable for human rights violations is a non-delegable duty of the state

Case 11.589 (Cuba), Inter-American C.H.R., Report N° 86/99 (Cuba), para. 47 (September 29, 1999).

Although a very small minority of the victims have filed civil lawsuits to seek some redress for vigilante violence against them, as noted in the petition and explained further below, the vast majority of the past victims— virtually all of whom have had to return to their countries of origin — have not. In any event, it would be inconsistent with the Commission’s jurisprudence and its underlying principles to require the victims to first attempt costly and lengthy civil actions on their own before seeking the Commission’s intervention. An adequate remedy requires the United States itself, through its competent prosecutorial agencies, to initiate and complete criminal

proceedings. As the Commission on several occasions has recognized, when a state fails to provide such a remedy in such circumstances, a lack of an adequate remedy exists and, hence, the exception to the exhaustion requirement applies.

I.
Identities and Circumstances of Victims and Efforts to
Raise their Complaints with Authorities

The victims are named and grouped below in relation to particular incidents of immigrant abuse. All of these incidents are described in the petition and or its appendices W1-17 and X. Several, but not all of the victims were named in the petition or those appendices. Additional names of victims have been provided by the Mexican Consulate in Douglas, Arizona and are provided here in association with the selected incidents. As already indicated, these victims and the circumstances surrounding their abuse are not exhaustive of the problem complained of by the petitioner. They are merely exemplary and representative of the many more victims who have suffered similar abuse.

It should also be added that the efforts described below in relation to each incident to get the attention of public authorities have been supplemented by the numerous additional and broader efforts by citizens, the petitioner and other non-governmental organizations, particularly the American Civil Liberties Union, to alert authorities about specific criminal activity by vigilantes including many of the incidents describe below. These efforts are described in the petition, at paras. 17-23.

A. Victims at the hands of the “American Border Patrol” and the Barnett Family

The “American Border Patrol” is one of the groups that have organized to engage in vigilante activity in the Border region. Among its affiliates or members are rancher Roger Barnett and members of his family, residents of the Arizona border region. *See* Petition, paras. 21, 24. The widespread pattern of vigilantism engaged in by the American Border Patrol and the Barnetts in particular is apparent by the following incidents that have involved violent or intimidating criminal action against the named victims. Despite the documentation of these incidents that has reached U.S. government officials, no criminal actions have been taken against the Barnetts or other members of the American Border Patrol.

Incident #1

Victims: There were 21 victims including

[REDACTED]

¹ See list of detained “Undocumented Aliens” Attachment to Cochise County Sherriff’s Department Incident Report (attached in Appendix W-1 of *Petition to the Inter-American Commission on Human Rights, submitted by the Border Action Network in relation to Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona against the United States of America, April 28, 2005*) [hereinafter

Circumstances: On October 10, 1999, at 7:00 a. m., rancher Roger Barnett, accompanied by his brother Donald, his wife Barbara, and Larry Vance of the Cochise County Concerned Citizens, drove his vehicle alongside the above victims which were sleeping near Arizona Highway 80.² Barnett jumped out, and ran over to where the victims were lying, with a rifle in hand and a pistol in his belt holster, similar to the pistol on Donald's belt. Sweeping the rifle over the group, Barnett commanded to the victims that nobody move, frightening the victims greatly.³ Barnett began talking on a handheld radio and then a cellular telephone. A film crew arrived thereafter, at the Barnett's request and began filming. A short time later, U.S. Border Patrol (hereinafter sometimes "USBP") agents arrived - to whom the people identified themselves as Mexican nationals.⁴

Complaints to Authorities: After the victims were taken by the USBP, six of the victims gave sworn videotaped statements of their complaints at the Wilcox Border Patrol Station. The Mexican Consulate was notified of the incident as well. All victims subsequently requested and were granted voluntary returns to Mexico.⁵ Arizona courts have taken no action in this case despite notice of this incident to Cochise County Attorney Chris Roll by Assistant U.S. Attorney Jan Kearney⁶ and also by the Mexican Consulate.⁷

Incident #2

Victims:

[REDACTED]

all references to Appendix refer to the Appendices attached to the petition]. In the law enforcement incident reports, see *infra* note 2, it was assumed all the victims were Mexican nationals – however the victims did not provide additional information such as their domicile.

² See Cochise County Sheriff's Department and U.S. Border Patrol (USBP) Incident Reports, dated October 10 and 13, 1999 (attached collectively in Appendix W-1); Mexican Consulate List of Abuses (Appendix X) [hereinafter Mexican Consulate list], at para. 6 .

³ Cochise County Sheriff's Department and USBP Incident Reports, *supra* note 2; Mexican Consulate list, *supra* note 2, at para. 6.

⁴ Cochise County Sheriff's Department and USBP Incident Reports, *supra* note 2; Mexican Consulate list, *supra* note 2, at para. 6.

⁵ USBP Memorandum from Jose Sinohui to Chief Patrol Agent, October 10, 1999 (attached in Appendix W1).

⁶ Memorandum from Jan E. Kearney, Assistant U.S. Attorney to Chris Roll, Cochise County Attorney, October 13, 1999 (attached in Appendix W1).

⁷ Communication from Mexican Consul Miguel Escobar Valdez, Mexican Consulate in Douglas, Arizona, to Border Action Network (BAN) legal representatives, August 16, 2005.

⁸ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7

Circumstances: This incident occurred on April 9, 2000, and it is one of many incidents perpetrated by members of the Barnett family.⁹ The victims were being transported by their “guides” in two vehicles, a Buick sedan and a Chevrolet pick up truck on Highway 80 heading northeast. While on the road, at about 1 a.m., a four-wheel drive truck parked on the side of the road, began to follow the victims. The driver of the pursuing truck lit up the big reflector lights on top of the truck. The driver made signals for the cars to stop. The guides did not stop because they knew the pursuing vehicle did not belong to a law enforcement agency. The driver of the pursuing truck suddenly passed the two vehicles, got in front of them, blocked the road and forced the victims to pull over to the side of the road.

A man, later determined to be Donald Barnett and a woman, both armed with guns, and accompanied by a dog, got off the vehicle and demanded the keys from both vehicles where the victims were. At one point, the woman took out her weapon to show it off and began pointing it at no particular person. Barnett, meanwhile, looked at the back of the Chevrolet truck, and removed the carpet to find some of the victims that were hiding in the back of the truck. Barnett threw away the carpet with contempt and called the victims “garbage”. Barnett then demanded the keys for both vehicles and told the victims to get out of the vehicles. Barnett and the woman proceeded to insult the immigrants, photograph them and then call the U.S. Border patrol, which transported the victims to the Douglas USBP Station.¹⁰

Complaints to Authorities: The victims reported this incident in their interviews with the Mexican Consulate and probably made statements to the USBP. The victims stated that they felt frightened at all times by the Barnett’s arrogance and show of force.¹¹ USBP agents did interview Barnett about the incident who told them that the victims voluntarily pulled over to the side of the road and after warning them, he contacted the USBP.¹²

This was one of the first cases that the Mexican Consulate noticed that the Barnett family started detaining immigrants on public roads or public lands and no longer using defense of private property as a pretext.¹³ Consul Escobar notified the Cochise County Attorney about the incident and requested this same office as well as the Cochise County Sheriff’s Office (hereinafter sometimes CCSO) and USBP to investigate the incident and press charges against the Barnetts.¹⁴ To this date, there has been no action by state or federal authorities; none of the victims were asked to appear as possible material witnesses.¹⁵

⁹ *Id.* and Mexican Consulate list, supra note 2, at para. 23. The account is based on the accounts given by the victims to the Mexican Consul in these two sources.

¹⁰ *Id.*; Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹¹ *Id.* The interviews conducted by the Mexican Consulate in all these cases took place while the victims were detained in the USBP stations. The USBP and Mexican Consulate have had an agreement that USBP would contact the Mexican Consulate whenever Mexican nationals were detained by armed vigilantes, *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Incident #3

Victim: [REDACTED]¹⁶

Circumstances: This incident occurred on August 16, 2000 and it again involves a detention by a member of the Barnett family.¹⁷ [REDACTED] entered the United States undocumented on the night of August 15, 2000. After walking all night, he rested on the bed of an arroyo that ran parallel to on what was part of Roger Barnett's ranch. The victim was suddenly frightened by the sound of vehicles and voices and as he was trying to hide, a dog approached him. Roger Barnett, dressed as a rancher and armed with a holstered gun, approached the victim. Barnett was accompanied by four other people, one of whom was carrying a television camera, and who all were probably members of an ABC news crew.

Roger Barnett, speaking Spanish, ordered the victim to sit on the ground. One of the women of the television crew began asking the victim questions such as where he came from, how he entered the country and where he was headed. The cameraman was filming this event and also filmed Barnett making statements to the news crew. Barnett proceeded to call the USBP which arrived shortly and took custody of [REDACTED].

Complaints to Authorities: The victim was interviewed by the USBP and the Mexican Consulate and reported the incident to them. The victim requested a voluntary exit to Mexico. However, the Mexican Consulate was told, by USBP supervisor Stevenson, that Assistant U.S. Attorney to Chris Roll, Jan Kearny, was notified of the incident, and ordered the victim to be transferred to Tucson until there was further notice from Cochise County Attorney Chris Roll on what to do. But no action was taken against Roger Barnett in this case.¹⁸

Incident #4

Victims: [REDACTED]¹⁹

Circumstances: On March 18, 2001, Roger and Donald Barnett, both armed with pistols, came upon 17 immigrants, including the above 16 individuals, who were in Barnett's

¹⁶ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷ The account is based on Consul Escobar's communication that is itself based on the interview with the victim. A summarized version also appears in the Mexican Consulate list of abuse, supra note 2, at para. 26.

¹⁸ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7; Cochise County Sheriff's Department Incident Report # 01-04444, prepared by P. Mathews, March 19, 2001 (Appendix W2).

ranch property, and forced all of them to sit.²⁰ When an unidentified member of the group stood and began to run away from the Barnetts, Roger Barnett removed his semi-automatic pistol and fired two shots, seemingly to frighten and stop the fleeing individual from running.²¹ When the unidentified fleeing individual did not return, the Barnetts forced the remaining members of the group – the above victims - to walk to the highway and called the Border Patrol, which arrived shortly thereafter and determined that the 16 remaining members of the group were Mexican nationals.²²

Complaints to Authorities: The victims reported the incident in their interviews to the USBP and Mexican Consulate. All victims were granted a voluntary return to Mexico by the USBP with the exception of [REDACTED]

[REDACTED] These four individuals were held as possible witnesses for the County regarding the shooting incident. They were transferred to detention centers in Tucson pending disposition by the Cochise County Attorney's Office.²³ Cochise County Detective George Hoke attempted to contact the Barnetts as part of an investigation into the events that occurred but was initially unsuccessful.²⁴ This investigation was left pending but appears to have been closed despite requests for further action made by the Mexican Consulate to Cochise County Attorney.²⁵

Incident #5

Victims: [REDACTED]

Circumstances: on October 27, 2002 at about 10 a.m., Roger Barnett, his wife Barbara and Glenn Spencer of the American Border Patrol, all wearing sidearms, detained the above 26 victims on Highway 80 northeast of Douglas at milepost 384.²⁷ The victims

²⁰ Id; USBP Incident Report prepared by M.G. Hyatt, March 18, 2001, (attached in Appendix W2); Mexican Consulate List, supra note 2, at para. 31.

²¹ USBP Incident Report, supra note 20; Mexican Consulate list, supra note 2, at para. 31.

²² USBP Incident Report, supra note 20; Mexican Consulate list, supra note 2, at para. 31.

²³ USBP Report supra note 20.

²⁴ Cochise County Sheriff's Department, Law Supplemental Narrative, prepared by Det. George Hoke, March 2001 (Appendix W2).

²⁵ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

²⁶ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

²⁷ Cochise County Sheriff's Incident Report # 02-17874, prepared by A.D. Parrish, November 12, 2002 (Appendix W5); Mexican Consulate list, supra note 2, at para. 43.

stated that they were approached by a pick-up truck driven by a woman, in which two armed men got off along with two dogs.²⁸ The victims, who reported feeling “terrorized,” tried to retreat after seeing the dogs but the armed men caught up with them and ordered them to sit down.²⁹ After seeing that a couple of the victims were not following orders, one of the armed men forcefully grabbed one of the victims by the shirt in order to force him to sit down.³⁰ Two other men showed up later, both were also armed and one of them began filming the apprehended victims, their captors and the USBP agents who later took custody of the victims.³¹

Complaints to Authorities: The victims reported the incident in their interviews to the USBP and the Mexican Consulate and two of them were interviewed by the Cochise County Sheriff’s Department. Ironically, the two victims stated that “at no time were they in fear for their safety nor were they mistreated by the Barnett family”.³² The County Sheriff’s report stated that attempts to contact Cochise County Attorney Chris Roll about the incident were “met with negative results”.³³ The Sheriff’s office eventually decided it was not necessary to hold the victims for further investigation since, contrary to the evidence gathered by the Mexican Consulate and the evidence gathered by its own officers, “it was discovered that no crime had taken place”.³⁴ The Mexican Consulate proceeded to contact the Cochise County Attorney about the incident.³⁵ There was no other investigation as of the events that took place, and the victims most likely were returned to Mexico.

Incident # 6

Victims:

[REDACTED]

(all from the state of Hidalgo).³⁶

Circumstances: On January 4, 2003, at approximately 9 a.m., the above nine victims were apprehended by Roger and Donald Barnett and other persons identifying as members of the “American Border Patrol”.³⁷ The group of immigrants was crossing the desert when they were approached by two dogs. The group remained in one place until two men with holstered firearms approached them and signaled them to stay in one place.³⁸ Fifteen

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* The identity of these two particular victims has not been established

³¹ *Id.*

³² Cochise County Sheriff’s Incident Report, *supra* note 27. The report states that the victims, who were not identified by name, reported they were given water by their captors, that “they were not scared and they were treated fairly and with respect”, *id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

³⁶ Cochise County Sheriff’s Incident Report # 03-00187, prepared by L. Hernandez) (Appendix W6); Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

³⁷ Cochise County Sheriff’s Report, *supra* note 36; Mexican Consulate list, *supra* note 2, at para. 44.

³⁸ Cochise County Sheriff’s Incident Report, *supra* note 36.

minutes later, the group was ordered to follow the armed men through the desert and onto the road where about a dozen members of the American Border Patrol were awaiting them in order to film and photograph the victims.³⁹ The U.S. Border Patrol arrived shortly to transport the immigrants to the Douglas Border Patrol Station.⁴⁰ The USBP reported that the apprehension was apparently made outside of the Barnett's private property.⁴¹

Complaints to Authorities: At the Douglas Border Patrol Station, the nine victims were interviewed by the USBP, Cochise County Sheriff Deputy L. Hernandez and Mexican Consulate Officer, Miguel Escobar. Both the Cochise County Sheriff's report and USBP report state that the victims reported no mistreatment or having felt threatened by the armed men or the dogs.⁴² However, the Mexican Consul stated that the immigrants did in fact state to him that they felt fearful of the armed men and of the angry dogs.⁴³ The USBP reported to have attempted to contact the Cochise County Attorney but was unsuccessful.⁴⁴ Eventually, USBP granted the victims a voluntary return.⁴⁵ The Sheriff's office submitted its incident report to the County Attorney for review but there is no indication of any further action on this matter.⁴⁶ As is its regular practice, the Mexican Consulate again informed Cochise County Attorney, and obtained no results.⁴⁷

Incident #7

Victim: [REDACTED] (from Navojoa, Sonora).⁴⁸

Circumstances: On January 19, 2003, at 10:15 a.m., Roger Barnett and his dogs intercepted [REDACTED] who was walking near Arizona Highway 80 east, about fifteen miles west of the New Mexico State line.⁴⁹ U.S. Border Patrol reports indicate that Border Patrol agent Gurlea "observed Mr. Barnett with his dog make contact with" [REDACTED] from a distance.⁵⁰ When the agent arrived at the scene, [REDACTED] told Gurlea that Barnett had hit him in the head with a flashlight and that Barnett's dog had bitten him several times.⁵¹ After the encounter, [REDACTED] was treated for injuries on his hands, leg, head and arm at Southeast Arizona Medical Center in Douglas,

³⁹ *Id.*; Mexican Consulate list, supra note 2, at para. 44.

⁴⁰ *Id.*; Cochise County Sheriff's Incident Report, supra note 36.

⁴¹ United States Border Patrol Memorandum for Chief Patrol Agent – Tucson, Arizona, January 4, 2003 (Appendix W6).

⁴² *Id.*; Cochise County Sheriff's Incident Report, supra note 36.

⁴³ Mexican Consulate list, supra note 2, at para. 44.

⁴⁴ USBP Memorandum, supra note 41.

⁴⁵ *Id.*

⁴⁶ Cochise County Sheriff's Incident Report, supra note 36.

⁴⁷ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

⁴⁸ Mexican Consulate list, supra note 2, at para. 47.

⁴⁹ See *Petition to the Inter-American Commission on Human Rights, submitted by the Border Action Network in relation to Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona against the United States of America*, April 28, 2005, at paras. 32, 49.

⁵⁰ *Id.*; USBP Significant Incident Report, Incident # 03-DGL-SIR-1-3-16, January 19, 2003 (Appendix W8).

⁵¹ *Id.*

and was deported shortly thereafter.⁵² Miguel Escobar Valdez, the Mexican Consul in Douglas, Arizona, confirmed his knowledge of these attacks, adding that Barnett had allegedly attempted to run [REDACTED] over with his vehicle at high speed at first sight.⁵³

Complaints to Authorities: [REDACTED] reported the incident to the USBP, the Cochise County Sheriff's office, and to the Mexican Consulate, which itself urged action and further investigation. But no charges were filed against Barnett. As explained below, [REDACTED] himself filed a civil lawsuit in the United States District Court for Arizona to recover damages.⁵⁴ To date, the case is still pending further action and trial within the District Court and depositions are still being scheduled.

Incident #8

Victim: [REDACTED] among 11 other unidentified victims.⁵⁵

Circumstances: On December 8, 2003, there was a shooting incident, most likely implicating the Barnett family and "American Border Patrol," that occurred some 20 km north of Douglas and 2 km from Arizona Highway 80.⁵⁶ [REDACTED] was part of a group of 12 people which included 4 women and 3 children that was traveling near the highway after having crossed the border the night before. A pick-up truck, carrying 2 ATVs in the back, suddenly appeared. Two men dressed in camouflage carrying a rifle and a shotgun - along with a woman and a dog - got off the truck.⁵⁷ The armed individuals ordered the victims to stop.

The victims reported that at first they thought the armed individuals were part of some kind of military force, due to the fact that the two men wore camouflage clothes.⁵⁸ The victims then tried to flee and at that moment the armed men started to shoot indiscriminately first with their rifles followed by their shotguns.⁵⁹ Each armed man made more than 20 shots towards the victims who threw themselves to the ground. The victims were able to eventually return to Mexican territory and most likely returned to their places of origin.⁶⁰

⁵² *Id.*

⁵³ See Letter from Miguel Escobar Valdez, Mexican Consulate to Hon. Chris Roll, Cochise County Attorney (Jan. 31, 2003) (Appendix Z).

⁵⁴ See *Quiroz-Acosta v. Barnett*, No. CIV-04-367-TUCFRZ (D. Ariz. July 12, 2004), at 4-6 (attached as Appendix OO).

⁵⁵ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

⁵⁶ Mexican Consulate list, *supra* note 2, at para. 53.

⁵⁷ *Id.*

⁵⁸ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

⁵⁹ *Id.*; Mexican Consulate list, *supra* note 2, at para. 53.

⁶⁰ *Id.*

down.⁶⁹ Some time afterwards, Barnett's wife arrived in a pickup and U.S. Border Patrol agents came to take the victims into custody.

Complaints to Authorities: Once the victims were taken into custody, they were interviewed and U.S. Border Patrol documented their accounts of the encounter with Barnett.⁷⁰ Although official reports on Barnett's actions were sent for review to Cochise County Attorney Chris Roll, Roll told Border Patrol agent Ritchie that he did not intend to place a hold on any of the victims to aid in prosecution.⁷¹ Agent Ritchie made several attempts over the following week to communicate with Barnett at his business in Sierra Vista, but Barnett ignored all visits and messages, and the investigation was discontinued.⁷² As explained in further detail below, one year later, sixteen of the victims filed a civil lawsuit in the United States District Court of Arizona against Barnett,⁷³ making nine civil rights claims for damages, which included claims for assault, battery, false arrest and false imprisonment, negligence, and intentional infliction of emotional distress.⁷⁴ Each of the victims provided depositions on the incident in the course of this civil lawsuit, which is still pending.

Incident #10

Victims: [REDACTED]

Circumstances: Yet another documented incident of violent anti-immigrant behavior by the Barnett family took place on June 5, 2004. In the early afternoon that day, the above group of 7 victims was resting in the brush near Highway 80, in what has supposedly part of Roger Barnett's Cross Rail Ranch. The victims heard the sound of a vehicle nearby, and Roger Barnett and his brother appeared shortly thereafter.⁷⁶ The victims split up to run away and hide, but the Barnetts pursued and eventually caught up to them.⁷⁷ Roger Barnett overtook one group of victims on foot, then grabbed one of the women, [REDACTED] by her hair and stuck a pistol against her left side near her ribs. He then held up his gun in front of the rest of the victims and said, "Do you know what this is?"⁷⁸ Meanwhile, Barnett's brother mounted an ATV and, with his dog, followed behind [REDACTED] who was attempting to escape on foot. The Barnetts' dog

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Vicente v. Barnett*, No. CIV-05-157-TUC-JMR, (D. Ariz. Mar. 4, 2005) (Appendix PP).

⁷⁴ *Id.* at 9-15.

⁷⁵ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

⁷⁶ Cochise County Sheriff's Incident Report #04-10362, prepared by D. Rachilla, June 7, 2003 (Appendix W14); Mexican Consulate list, *supra* note 2, at para. 62.

⁷⁷ Cochise County Incident Report, *supra* note 76; Mexican Consulate list, *supra* note 2, at para. 62.

⁷⁸ Cochise County Incident Report, *supra* note 76; Mexican Consulate list, *supra* note 2, at para. 62.

caught up with [REDACTED] and bit him in the thigh.⁷⁹ The dog bite caused him to fall to the ground, where Barnett's brother soon arrived, kned him in the stomach and carried him away on the front of his ATV to meet Barnett and the others.⁸⁰

Complaints to Authorities: Several of the above victims gave accounts of the incident to the Cochise County Sheriff's Department. The Department report on the incident states that the Barnetts had committed two felony violations under Arizona State law: Aggravated Assault, class 3 felony; and Disorderly Conduct, class 6 felony.⁸¹ The U.S. Border Patrol also notified the U.S. Attorney's office—specifically, that of Assistant United States Attorney Shawn Chapman—of the Barnetts' actions several days after the incident.⁸² Each of the victims provided depositions on the incident. The Mexican Consulate requested an investigation from the Cochise County Attorney.⁸³ Nevertheless, like the other documented confrontations, neither the federal nor Arizona state prosecutors ultimately brought charges against the anti-immigrant actors.

Incident # 11

Victims:

[REDACTED]

84

Circumstances: On July 4, 2004, at about 6:25 p.m., Roger Barnett, another armed individual, Barnett's wife and three dogs apprehended the above victims in the Hog Canyon and Rough Canyon area on Highway 80 in Douglas.⁸⁵ The victims were detained by two individuals with holstered guns and who were wearing green clothing and hats that resembled Border Patrol uniforms – thus making the victims believe they were

⁷⁹ Cochise County Incident Report, supra note 76; Mexican Consulate list, supra note 2, at para. 62.

⁸⁰ Cochise County Incident Report, supra note 76; Mexican Consulate list, supra note 2, at para. 62.

⁸¹ Cochise County Incident Report, supra note 76.

⁸² USBP Significant Incident Report, # 04-DGL-SIR-6-2-50, June 5, 2004, prepared by M.P. Warwick (Appendix W14).

⁸³ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

⁸⁴ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

⁸⁵ See Cochise County Sheriff's Incident Report # 04-12377, prepared by D. Rachilla, July 5, 2004 (attached as Appendix W15).

detained by actual law enforcement officials.⁸⁶ The two men then pointed their guns at the group and warned them not to move. Barnett pushed two women, [REDACTED] and [REDACTED], and hit [REDACTED] on one of her breasts.⁸⁷ While pointing their guns at the victims, the ranchers also set the dogs on them to further frighten them and ordered them to remove their shoes so that they would walk barefoot over the desert ground.⁸⁸ Barnett notified the USBP who later took custody of the victims. Barnett then pressed charges against the victims for trespassing and citations were given to each them by the Cochise County Sheriff's Department.⁸⁹

Complaints to Authorities: The victims reported the incident to the Mexican Consulate and were in turn interviewed by the Cochise County Sheriff's Department. Contrary to the account gathered by the Mexican consulate, the County Sheriff's report, which only lists 22 of the above victims, the victims reported that they were not assaulted, threatened, mistreated or had anyone point a gun at them and that the Barnetts did not identify themselves as law enforcement or immigration officials.⁹⁰ [REDACTED] and [REDACTED], are not listed in the Sheriff's report nor was there mention of the attack towards the three women.⁹¹ Astonishingly, instead of investigating further in accordance with the account gathered by the Mexican consulate, the Cochise County authorities cited the victims for trespassing and ordered them to appear at the Douglas court on August 3, 2004.⁹² All of the victims were returned to Mexican territory.⁹³ The Mexican Consulate again notified Cochise County Attorney, to no avail.⁹⁴

Incident #12

Victim: [REDACTED]

Circumstances: On October 11, 2003, [REDACTED] was walking to a well on his property when he witnessed Roger Barnett, accompanied by his wife Barbara and brother Don, approach a group of immigrants.⁹⁵ Roger and Don Barnett were dressed in desert hunting clothes indistinguishable from the clothes worn by United States Border Patrolmen. All three Barnetts were armed with

⁸⁶ Mexican Consulate list, supra note 2, at para. 63.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See copies of citations attached in the Cochise County Sheriff's Incident Report, supra note 85.

⁹⁰ *Id.* The Sheriff's report does state one victim, [REDACTED], did have a gun pointed at him when he was about to throw a rock at Barnett but desisted after Barnett pointed his gun at him, *id.* There is no mention of this incident in the Mexican Consulate report.

⁹¹ *Id.*; *Cf.* Mexican Consulate list, supra note 2, at para. 63.

⁹² See citations, supra note 89.

⁹³ Mexican Consulate list, supra note 2, at para. 63. The trespassing charges against the victims were dismissed, Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

⁹⁴ *Id.*

⁹⁵ See *Petition to the Inter-American Commission on Human Rights*, supra note 1, at para. 48; *Border Action Network v. Barnett*, No. CIV 03-613-TUC-JMR (D. Ariz. Dec. 17, 2003) (Appendix LL), at para. 4.

pistols.⁹⁶ They ordered the immigrants to walk to a road outside of Mackenzie's property, where the U.S. Border Patrol eventually met the group and detained the immigrants.⁹⁷ Mackenzie had not given the Barnetts permission to enter his property, but was afraid to confront them that day because their manner and behavior revealed a willingness to use their weapons against their detainees or against anyone whom they thought interfered with their capture.⁹⁸

Complaints to Authorities: On December 10, 2003, BAN and ██████████ filed a civil lawsuit in federal court against Roger, Donald and Barbara Barnett, charging them with impersonating an officer of the United States and conspiracy to violate immigrants' civil rights, among other federal and state violations.⁹⁹ ██████████ submitted a deposition for the case. Ultimately, however, this lawsuit was dismissed on the grounds that BAN and ██████████ lacked standing to assert these violations on behalf of the immigrant victims directly harmed by the Barnetts' actions.¹⁰⁰ As explained below, ██████████ subsequently filed a new suit in the Superior Court of Cochise County, which includes charges of trespassing and impersonating law enforcement officers.¹⁰¹ Because of its more limited nature, this new lawsuit does not incorporate any requests for damages or other redress specifically on behalf of the immigrant victims.¹⁰² The case has not yet gone to trial and depositions of the parties are still being scheduled.

Incident #13

Victims: ██████████

██████████¹⁰³

Circumstances: On October 30, 2004, Roger and Don Barnett detained members of the ██████████ and ██████████ families—all U.S. nationals of Mexican American descent and longstanding residents of Cochise County—at gunpoint, barraging them with harsh language and racial insults.¹⁰⁴ ██████████ were hunting that afternoon on what they believed to be state land, accompanied by ██████████'s daughters, nine year-old ██████████, eleven year-old ██████████, and ██████████'s eleven year-old friend, ██████████. As ██████████ was away tracking a deer with ██████████ close behind, Don Barnett approached Art, ██████████ and ██████████ on an ATV and began yelling at them to “get the fuck out” of his

⁹⁶ *Id.* at para. 5.

⁹⁷ *Id.* at para. 6.

⁹⁸ Affidavit of ██████████, Dec. 10, 2003, at para. 7. (Appendix MM).

⁹⁹ *Border Action Network v. Barnett*, supra note 95, at para. 23.

¹⁰⁰ Petition, supra note 1, at para. 48.

¹⁰¹ *Id.*; ██████████ v. *Barnett* (Super. Ct. Ariz. Nov. 26, 2004), at 4 (Appendix NN).

¹⁰² Petition supra note 1, at para. 48.

¹⁰³ *Id.*, at para. 37; Cochise County Sheriff's Incident Report #04-20707, prepared by Dep. Williams (Appendix W16).

¹⁰⁴ See *Id.* including written statements by 9 year-old ██████████, 11 year-old ██████████ and 11 year-old ██████████. See also Bill Hess, “Plaintiffs discuss suit against rancher” *Sierra Vista Herald*, Nov. 30, 2004 (attached as Appendix AA1); Border Action Network, *Border Vigilantes Armed with Assault Weapons Terrorize Local Douglas Families and Children*, Dec. 7, 2004, at <http://www.borderaction.org/news2.php?articleID=13> (Appendix A1).

property.¹⁰⁵ [REDACTED] and [REDACTED] heard the commotion and came quickly to the scene, followed by Roger Barnett, who arrived in a Dodge pickup. Roger Barnett got out of his truck toting an A-15 assault rifle, then fired a round into the ground and pointed the gun at the [REDACTED] and the young girls.¹⁰⁶ [REDACTED] instructed the girls to go get in the back of their vehicle and duck behind the seat, and attempted to explain to Barnett that he had a permit to be hunting on the land. Barnett yelled that [REDACTED] probably knocked down a “No Trespassing” sign himself and, calling him an “ignorant Mexican,” advanced on him, all the while pointing his rifle and screaming obscenities and death threats.¹⁰⁷ The statements of the young girls reveal the extreme intensity of the encounter and the vicious attitude of the Barnetts; the girls describe screaming, crying and shaking with fear that Barnett—himself shaking and red in the face with rage—was going to kill them.¹⁰⁸

Complaints to Authorities: The Barnetts complained to the Sheriff’s Department and provided depositions on the incident. The Sheriff’s Department conducted an initial investigation and concluded that the Barnetts had committed eight counts of aggravated assault, five counts of disorderly conduct and five counts of threat and intimidation during the incident.¹⁰⁹ Nonetheless, the Cochise County Attorney has not files charges against them and has not adequately responded to the victim’s demands for information on the investigation and prosecution of this matter.¹¹⁰ As explained below, the [REDACTED] and [REDACTED] families are pressing a civil lawsuit against the Barnetts in the Superior Court of Cochise County.¹¹¹ The case is still pending.

B. Victims at the hands of the Vigilante Group “Civil Homeland Defense” and Chris Simcox

The so-called “Civil Homeland Defense,” headed by Chris Simcox of Tombstone, Arizona, is another or the groups that promotes, organizes and engages in violent vigilantism in the border area. *See* Petition, at para 26. The following are a few of the documented incidents of violent abuse against immigrants committed by Simcox and his organization, incidents that have also gone without prosecution by law enforcement officials.

Incident #14

Victims: [REDACTED]

¹⁰⁵ Cochise County Sheriff’s Incident Report, *supra* note 103.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (statements of [REDACTED]).

¹⁰⁹ *Id.*

¹¹⁰ *Petition to the Inter-American Commission on Human Rights*, *supra* note 1, at para. 45.

¹¹¹ *Id.* at para. 50; [REDACTED] v. *Barnett*, CV 200400779 (Super. Ct. Ariz. Nov. 26, 2004).

[REDACTED]

¹²²

Circumstances: On September 27, 2003, the above nine victims were detained by Chris Simcox, of Civil Homeland Defense, his wife Carmen and an individual named Bill Long.¹²³ The three assailants were also accompanied by another individual, who took photographs and also had a video camera, and a dog. The victims were traveling in a rural area, which was not private property, some 2 miles south of Highway 92 east of the San Pedro River, when the three armed assailants appeared driving a pick-up truck.¹²⁴ The woman, told the victims in a menacing voice to stop and sit on the ground. She then used a cellular phone to call the USBP.¹²⁵ The victims reported that the assailants all wore black shirts and dark pants and had holstered guns. The sight of the vigilantes and the dog caused fear and apprehension among the victims.¹²⁶ The victims stated that the fourth individual worked for a newspaper of which the victims could not remember the name.¹²⁷ The victims were then taken by the USBP to the Naco Station.

Complaints to Authorities: The victims reported the incident to the USBP and the Mexican Consulate, which then requested an investigation from the Cochise County Attorney.¹²⁸ But no action was taken against the perpetrators in this case.

Incident # 16

Victims: [REDACTED]

¹²⁹

Circumstances: On March 28, 2004, two English-speaking individuals, one of whom identified himself as “Chris,” detained the above 17 victims, which included 8 women.¹³⁰ The victims were near a railroad bridge near the San Pedro River in Southern Arizona, when they were approached by the two men one of which had a holstered firearm. The

¹²² Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.
¹²³ *Id.*; Mexican Consulate list, supra note 2, at para. 51.
¹²⁴ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.
¹²⁵ *Id.*
¹²⁶ *Id.*
¹²⁷ *Id.*
¹²⁸ *Id.*
¹²⁹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.
¹³⁰ Mexican Consulate list, supra note 2, at para. 58.

men ordered the group to stop. When the victims tried to escape, the armed man took out his gun, pointed it at the group and threatened to shoot.¹³¹ The victims stopped running and were ordered to sit down. One of the men then went to his vehicle, took out a camera and photographed the victims.¹³² The aggressors, speaking broken Spanish, then ordered the group to stand up and walk single file towards Highway 90. One of the victims, [REDACTED] apparently did not follow orders and was consequently kicked on his rear. Another victim, [REDACTED] who was in the back of the line, was hit in the back because he was not keeping up with the line.¹³³ The apprehenders then contacted the U.S. Border Patrol and right before the agents arrived, got back in their vehicles and drove away without identifying themselves to the agents.¹³⁴ The USBP reported that the person who contacted them called himself “Chris” but provided no last name.¹³⁵

Complaints to Authorities: The victims reported the incident when interviewed by the Mexican Consulate and to the USBP. The victims reported to the Consulate that they felt frightened by their captors’ aggression and the threats they made to the victims.¹³⁶ Cochise County Sheriff’s deputies also interviewed the victims.¹³⁷ The victims were deported to Mexico by the USBP. The Mexican Consulate reported the incident to the Cochise County Attorney and requested an investigation.¹³⁸ There has been no further action regarding this incident.

C. Victims at the Hands of Vigilante Group Ranch Rescue

The vigilante group “Ranch Rescue,” which originated in Texas, is yet another of the several vigilante groups that has operated in the Arizona border region. Under the guise of protecting private property, it became a menacing, violent force against immigrants. Although members of Ranch Rescue have been successfully prosecuted for vigilante activity in Texas, their actions in southern Arizona have gone without prosecution. The following are examples of these actions.

Incident # 17

Victims: [REDACTED]

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*; Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

¹³⁵ *Id.*

¹³⁶ *Id.*; Mexican Consulate list, *supra* note 2, at para. 58.

¹³⁷ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

¹³⁸ *Id.*

Circumstances: On February 27, 2004 at approximately 2:45 p.m., two members of anti-immigrant group Ranch Rescue, each of whom carried a rifle and pistol, detained the above victims at gunpoint. Dressed in military fatigues, the gunmen first came upon 11 of the victims while on a patrol in Douglas Arizona, southeast of Ranch Rescue property and only several hundred yards north of the U.S.-Mexico border.¹⁴⁰ After ordering the first group to stop, the men noticed 7 other of the victims 50 feet away. They told the second group to stop as well. One of the assailants stated, “If you run we’ll shoot.” The Ranch Rescue vigilantes then notified the U.S. Border Patrol of the situation and the victims were taken into custody soon thereafter.¹⁴¹ The victims stated that they were frightened by the assailants’ display of force and that at no point did they see a fence indicating they were on private property.¹⁴²

Complaints to Authorities: Several days later, sheriff’s Deputy Sean Gijanto prepared a report and sent a copy to the Cochise County Attorney’s office, noting that the activities of the Ranch Rescue members violated two sections of Arizona state law: Unlawful Imprisonment, a class 6 felony; and Threatening and Intimidating, a class 1 misdemeanor.¹⁴³ The victims provided depositions on the incident. Yet, the County Attorney’s office failed to prosecute or even further investigate the incident.¹⁴⁴

Incident #18

Victims:

[REDACTED]

Circumstances: On July 11, 2004, the above 22 victims were apprehended by two unidentified armed individuals who belonged to the vigilante group Ranch Rescue.¹⁴⁶

¹³⁹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁴⁰ *Id.*; *Petition to the Inter-American Commission on Human Rights*, supra note 1, at para. 33.

¹⁴¹ *Id.*

¹⁴² Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁴³ Cochise County Sheriff’s Department Narrative Report, prepared by S. Gijanto, Feb. 29, 2004 (attached as Appendix W11).

¹⁴⁴ *Petition to the Inter-American Commission on Human Rights*, supra note 1, at para. 33.

¹⁴⁵ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁴⁶ Mexican Consulate list, supra note 2, at para. 64.

While the victims were traveling on Highway 80 near the community of Double Adobe, they were approached by two camouflaged men – one carrying a rifle, the other carrying two pistols.¹⁴⁷ The two vigilantes were driving an old model green Nissan pick-up truck. One of the vigilantes, who had long blond hair and was corpulent, carried the rifle, while the other man with the two pistols, unholstered one of the pistols and pointed it at the victims.¹⁴⁸ The man with the long hair, then fired a shot to the air, clearly to intimidate the victims.¹⁴⁹ The captors then drove the victims to Highway 80, they called the U.S. Border Patrol and told them to pick up the victims on the road. When the USBP arrived, the vigilantes drove away without speaking to the USBP agents.¹⁵⁰

Complaints to Authorities: The Mexican Consulate reported the incident to the Cochise County Sheriff's Office, which had also received an anonymous phone call stating that about 20 immigrants were held at gunpoint in the above mentioned location.¹⁵¹ There was no further action by law enforcement authorities.

D. Victims at the Hands of Other Vigilantes

The government's tolerance and of vigilantism and related attitudes against immigrants from south of the border has encouraged an ever increasing number of private citizens to engage in that behavior and to do so with impunity. *See* Petition, at paras. 17-20. The following are a few of the documented incidents in which private citizens, acting with or without the backing of organized groups, have committed violent acts against immigrants without suffering any consequences at the hands of law enforcement officials.

Incident #19

Victims: In this incident there were 31 victims. Two of the victims are known to be [REDACTED], age 16 at the time, and [REDACTED].¹⁵² From the rest of the victim group, 27 people were from El Salvador and 2 were from Guatemala.¹⁵³

Circumstances: On February 25, 2000, the above victims were in the vicinity of the property of rancher Andreas Mueller, when the van they were being transported broke down.¹⁵⁴ As the victims waited for the van to be repaired, Mueller approached the victims in a violent manner, uttering insults and threatening them with his shotgun.¹⁵⁵ Mueller then hit two of the victims with a portable lamp and also hit one of them with the

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

¹⁵² Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

¹⁵³ *Id.* The names of these Central American victims was not retained by the Mexican Consulate Office.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

butt of his rifle.¹⁵⁶ Some of the victims, including women and one little girl, were so frightened they attempted to escape, at which point, Mueller fired a warning shot to the air at short distance from the little girl's head.¹⁵⁷ The U.S. Border Patrol, which was contacted by Mueller's wife, arrived later and took custody of the victims.¹⁵⁸

Complaints to Authorities: The victims reported the incident in interviews done by the USBP and the Mexican Consulate.¹⁵⁹ The victims reported to have felt fear during their detention by Mueller due to his aggression.¹⁶⁰ The Mexican Consulate reported the incident to the Cochise County Attorney.¹⁶¹ The Mexican Consulate was told by the Cochise County Sheriff's Office that one of its deputies interviewed Mueller about the incident but no further information or documentation was provided to the Consulate.¹⁶² There is no other information as to any further investigation or action by law enforcement officials regarding this matter.

Incident #20

Victims; There were 13 victims including

[REDACTED]

and one unnamed male Dominican citizen.¹⁶³

Circumstances: This incident occurred on April 5, 2000.¹⁶⁴ After the victims entered the United States undocumented through the Douglas/Agua Prieta border area, they awaited a vehicle to take them to Phoenix. After discovering that the vehicle was in need of repair, the victims crossed over a fence into private property in order to wait and rest while hiding in some bushes. The victims saw a woman, Linda Louise Mueller, approach them from a nearby house. The woman began to insult them while she was holding a large dog with which she intended to frighten or even injure the victims.

The victims began to run away, however, the dog was able to tear off some of the victims' clothing and bite [REDACTED] on his right thigh and left hand. The victims crossed over the fence again and were able to get out of the property. The woman's husband, Andreas Mueller, armed with a shotgun, got on his pick-up truck to follow the victims. Mueller stopped his vehicle in front of the victims, got off the truck

¹⁵⁶ Mexican Consulate list, supra note 2, at para. 16. The three victims mentioned were Salvadorian nationals, Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁵⁷ *Id.*; Mexican Consulate list, supra note 2, at para. 16.

¹⁵⁸ *Id.*

¹⁵⁹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁶⁰ Mexican Consulate list, supra note 2, at para. 16.

¹⁶¹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁶² *Id.*

¹⁶³ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁶⁴ The account is based on the communication from Consul Escobar recounting the victims' testimony, *id.* and on the Mexican Consulate list, supra note 2, at para. 22.

and started to threaten them while pointing his weapon near their faces. According to the victims' accounts, Mueller did this in order to make them go back to his property so that the USBP would find the victims inside Mueller's property. The victims were able to avoid returning to Mueller's property, and some time later, the USBP arrived. According to the victims, Mueller unloaded his shotgun and put it in the back of his truck, so as to appear unarmed when the USBP arrived.

Shortly thereafter, [REDACTED] was taken to Southeast Medical Center in Douglas where he was treated. He was later taken back to the USBP station to rejoin the other victims who all requested a voluntary return to Mexico.

Complaints to Authorities: The victims reported the incident in their interviews with the Mexican Consulate. Deputies of the Cochise County Sheriff's Office also talked with the Mexican Consul regarding the incident. The matter was investigated by CCSO Deputy Paul Mathews who did confirm that Mrs. Mueller insulted and threatened the victims with the dog, which was clearly an attack dog. The Mexican Consulate reported the incident to the Cochise County Attorney, but there is no indication of further action by U.S. law enforcement officials regarding this matter.

Incident #21

Victims: In this incident there were 9 victims. [REDACTED]
[REDACTED] from Michoacan, Mexico.¹⁶⁵

Circumstances: On March 27, 2000, the above victims were walking by a ditch next to a road near Highway 80 in the outskirts of Douglas, Arizona next to a fence. A private citizen, Dan Morrison, armed with a gun, suddenly appeared and threatened the victims to stop.¹⁶⁶ At this point, the victim's "guide" began to run away, followed by the above victims who thought that Morrison was a Border Patrol agent.¹⁶⁷ Morrison fired six or seven times; he claimed to the Cochise County Sheriff's office that the shots were fired to the ground. However, the victims stated the shots were fired towards them because they felt the bullets fly over their heads and even hit dry branches near them as they hit the ground.¹⁶⁸ The victims decided to remain on the ground to await the USBP rather than risk being shot.¹⁶⁹ The U.S. Border Patrol arrived later after being notified by Morrison's wife.¹⁷⁰

Complaints to Authorities: The victims reported this incident in interviews by the Mexican Consulate and to the USBP. The victims stated they were greatly frightened by

¹⁶⁵ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁶⁶ Mexican Consulate list, supra note 2, at para. 21.

¹⁶⁷ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁶⁸ *Id.*; Mexican Consulate list, supra note 2, at para. 21.

¹⁶⁹ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷⁰ *Id.*

the shots fired by Morrison.¹⁷¹ Mexican Consul Miguel Escobar also interviewed USBP supervisor Stevenson, who told them the identity of the assailant and that the Cochise County Sheriff's Office was conducting an investigation. The Consulate was unsuccessful in obtaining more information from the CCSO regarding the incident.¹⁷² Supervisor Stevenson told Consul Escobar that the victims were to be retained for further testimony by request of U.S. Attorney in Arizona.¹⁷³ But there is no indication of any further investigation of the matter and no action has been taken against Morrison.

Incident #22

Victims: [REDACTED]
[REDACTED] from Parral, Chihuahua).¹⁷⁴

Circumstances: On September 20, 2002, Harry Harvey, a private citizen, detained the above victims whom he then turned over to U.S. Border Patrol agents from the Naco Station.¹⁷⁵ The three victims were resting in the thickets in the area of Highway 90 between the cities of Hereford and Sierra Vista, when Harvey, driving a Blazer, approached the victims.¹⁷⁶ Harvey was wearing work clothes, carried a gun in the holster, extra ammunition, a bottle of maze and wore a belt buckle that read "Sheriff San Bernardino".¹⁷⁷ As one of the victims, [REDACTED] tried to get up, Harvey loosened the strap in his gun holster and while resting his hand on the gun handle menacingly, he threatened everyone to remain seated.¹⁷⁸ Harvey, then proceeded to contact the USBP, which shortly thereafter took custody of the victims.

Complaints to Authorities: The victims reported the incident during the interviews with the USBP and Mexican Consulate at the Naco USBP station.¹⁷⁹ The victims reported they felt threatened by the constant threats by Harvey.¹⁸⁰ The victims were subsequently released by the USBP and were assisted by the Mexican Consulate in returning voluntarily to Mexico.¹⁸¹ The Mexican Consulate reported the incident to the Cochise County Attorney, expressing its dissatisfaction with the lack of investigation.¹⁸² There is no information as to any further action by law enforcement officials.

Incident #23

Victim: [REDACTED] (from Hermosillo Sonora).¹⁸³

¹⁷¹ Mexican Consulate list, supra note 2, at para. 21.

¹⁷² Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷³ *Id.*

¹⁷⁴ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷⁵ Mexican Consulate list, supra note 2, at para. 38.

¹⁷⁶ *Id.*; Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷⁷ Mexican Consulate list, supra note 2, at para. 38.

¹⁷⁸ *Id.*; Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

Circumstances: On October 9, 2002, a private citizen named Richard Gere, detained the above victim on Highway 92 outside of the city of Sierra Vista, Arizona.¹⁸⁴ [REDACTED] was walking on the edge of the road when he noticed a pick-up truck driving in the opposite direction. When, Gere, the driver of the truck noticed the victim, he got off the road toward the victim.¹⁸⁵ Gere began to talk to [REDACTED] in English; [REDACTED] responded he did not understand. Gere then asked the victim in broken Spanish if he was “illegal”, to which the victim responded affirmatively.¹⁸⁶ Gere then took out his chrome pistol through the open truck window and pointed it at [REDACTED].¹⁸⁷ Gere told the victim to lie on the ground while making insulting remarks such as that “all Mexicans come here to steal” and constantly ordering [REDACTED] not to look at him¹⁸⁸. Gere then used his cellular phone to call the USBP which took custody of the victim.¹⁸⁹ The USBP the let Gere go.¹⁹⁰

Complaints to Authorities:The victim reported the incident to the USBP and Mexican Consulate, and the USBP notified the Cochise County Sheriff’s office of the incident. [REDACTED] was subsequently deported back to Mexico.¹⁹¹ There was no further investigation by law enforcement officials, despite a request by the Mexican Consulate to the Cochise County Attorney.¹⁹²

Incident #24

Victims: [REDACTED] (all from Guanajuato).¹⁹³

Circumstances: On January 6, 2003, the above five victims were apprehended by Steve Nelson, a private citizen, on Highway 92.¹⁹⁴ The immigrants were walking alongside the highway, outside of Sierra Vista, where they were looking for a vehicle which their “guide” had told them would pick them up.¹⁹⁵ After finding the vehicle, with no driver, the victims decided to wait inside the vehicle. Some time later, the victims were suddenly approached by a man, Nelson, who got off his vehicle and ordered them in English to get off the vehicle. After seeing that the victims did not understand him, Nelson asked them in broken Spanish if they were “illegals”.¹⁹⁶ After they responded “yes”, Nelson took out

¹⁸⁴ Mexican Consulate list, supra note 2, at para. 41.

¹⁸⁵ *Id.*

¹⁸⁶ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁸⁷ Mexican Consulate list, supra note 2, at para. 41.

¹⁸⁸ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁸⁹ Mexican Consulate list, supra note 2, at para. 41.

¹⁹⁰ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁹⁴ Mexican Consulate list, supra note 2, at para. 45.

¹⁹⁵ Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

¹⁹⁶ Mexican Consulate list, supra note 2, at para. 45.; Communication from Mexican Consul Miguel Escobar Valdez, supra note 7.

his automatic pistol, pointed it at the group, and ordered them to lie on the ground.¹⁹⁷ Nelson then contacted the U.S. Border Patrol which transported the victims to the Naco Border Patrol Station.¹⁹⁸ The incident occurred on a public highway and not on private property.¹⁹⁹

Complaints to Authorities: The victims reported the incident in their interview with the Mexican Consulate to which they declared that they felt fearful and threatened by Nelson who pointed his gun at them at all times.²⁰⁰ According to the Mexican Consulate, Cochise County Sheriff deputies were notified by the USBP of the incident, and after a preliminary investigation, they released Nelson.²⁰¹ The Mexican Consulate reported the incident to the Cochise County Attorney requesting an investigation.²⁰² There was no further action was taken by law enforcement officials.

II. Status of Civil Proceedings Pursued by Some of the Victims

Four different civil proceedings have been initiated by some of the above-named victims, in efforts to achieve at least partial redress for the abuses they have suffered. These proceedings and the status of each one are described below, in relation to the names of the victims and the incidents identified above.

Obviously relatively few of the victims have pursued civil actions. The Commission has asked for information as to why other victims have not. Given the nature of overall pattern of vigilantism being complained of in this case— which involves an indeterminate number of vulnerable victims who are assaulted, then are detained and then are usually summarily expelled from the country—it is impossible to answer this question with particularity. However, it can readily be surmised that immigrant victims such as those identified above, who have been returned to Mexico or other country of origin and who have no right to reenter the country legally, have great difficulty in accessing private legal counsel in the United States who are able and willing to pursue civil actions on their behalf. The Mexican Consul in Douglas, Arizona, who has conducted hundreds of interviews with Mexican immigrants who have been subject to vigilante aggression and are held in detention by the U.S. Border Patrol, reports that the immigrants are uniformly fearful and understandably reluctant to do anything other than return to Mexico with, in the case of many, the intention of simply trying again to return to the United States undocumented. Victims in such circumstances cannot ordinarily be expected to themselves be in the position to mount a legal action against their aggressors. This fact simply underscores the responsibility of the United States to itself take action to correct a widespread pattern of criminal behavior.

Only two of the civil lawsuits described below involve immigrant victims. The other two were brought by victims who are citizens of the United States.

¹⁹⁷ Mexican Consulate list, *supra* note 2, at para. 45.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Communication from Mexican Consul Miguel Escobar Valdez, *supra* note 7.

²⁰² *Id.*

1. [REDACTED], a Mexican national and the victim named in Incident # 7, above, filed a civil lawsuit in connection with that incident in the United States District Court for Arizona against Roger Barnett. [REDACTED] claim against Barnett is based on allegations of battery, false imprisonment, and intentional infliction of emotional distress.²⁰³ [REDACTED] is seeking to recover at least US\$200,000 in compensatory damages plus punitive damages and any other relief granted by the court.²⁰⁴ This case is currently in the discovery process in which the taking of depositions and exchange of documents between the parties is still ongoing. No trial date has been set.²⁰⁵

2. A civil lawsuit was filed by the following victims, all Mexican nationals, named in Incident #9, above, in connection with that incident: [REDACTED]

[REDACTED]. Additional plaintiffs joined the lawsuit as [REDACTED], using pseudonyms for fear of adverse action based on their immigration status. This civil lawsuit was filed in the United States District Court of Arizona against Roger, Barbara and Donald Barnett as well as Cochise County Sheriff Larry Dever and 10 unidentified Defendants.²⁰⁶ The cause of action is based on nine separate claims against the defendants, including three claims of violations of United States civil rights statutes: 42 U.S.C. §1985(3) (violations of equal protection of the laws, due process under the law and for racial discrimination by all the defendants in their individual and official capacities); 42 U.S.C. §1986 (violations by Sheriff Dever and the unnamed defendants in their individual and official capacities of plaintiffs' civil rights for failing to prevent the conspiracy by all defendants to deprive Plaintiffs of their civil rights); and 42 U.S.C. §1983 (violations by Sheriff Dever and two of the unnamed defendants for violations of Plaintiffs' U.S. Constitution Fourteenth Amendment right to equal protection of the laws).²⁰⁷ The other six claims against the defendants in this suit are based on tort law claims of assault, battery, false arrest and false imprisonment, negligence, negligence per se and intentional infliction of emotional distress.²⁰⁸ This lawsuit seeks to recover from the defendants actual damages of US\$1 million for each of the sixteen plaintiffs; punitive or exemplary damages of US\$1 million for each plaintiff; as well as attorney's fees and other legally applicable costs – which leads to a total of US\$32 million.²⁰⁹

The case is still in the pre-trial stage. Pre-trial motions have been filed by both parties arguing about the need asserted by certain victims to remain anonymous due to privacy

²⁰³ See [REDACTED] v. Barnett, No. CIV-04-367-TUCFRZ (D. Ariz. July 12, 2004), at 4-6 (complaint attached to the Petition as Appendix OO).

²⁰⁴ *Id.* at 6.

²⁰⁵ Communication from Jesús R. Romo Véjar, Attorney for the Plaintiff, August 18, 2005.

²⁰⁶ [REDACTED] v. Barnett, No. CIV-05-157-TUC-JMR, (D. Ariz. Mar. 4, 2005) (complaint attached as Appendix PP to the Petition).

²⁰⁷ *Id.* at 9-10.

²⁰⁸ *Id.* at 9-15.

²⁰⁹ *Id.* at 15.

interests and concerns over their status and stigmatization as “illegal aliens”.²¹⁰ The plaintiffs have also requested the District Court that certain types of documents, such as employment, medical, law enforcement and government records, be ordered to be maintained as confidential to protect the interests of all parties in regards to sensitive information that might not want to be disclosed by the parties.²¹¹ The case is in the early stages of discovery, including depositions and exchange of information. No trial date has been set.

3. [REDACTED], a U.S. citizen and the victim named in Incident #12, above, filed a lawsuit in the Superior Court of Cochise County against Roger, Barbara and Donald Barnett in connection with that incident. This suit is based on a claim of trespass and a charge of criminal impersonation of a police officer “with the intent of inducing another person to allow access to property”.²¹² The relief sought by [REDACTED] is a preliminary injunction against further trespassing by the Barnetts, a permanent injunction against further trespass after final determination of the case, and the plaintiff’s damages and costs along with other relief deemed proper by the court.²¹³ Because of its limited nature, this legal action would not win redress specifically for the direct victims of vigilante violence²¹⁴ The case is currently in the discovery process where depositions and exchange of documents between the parties is still ongoing – no trial date has been set.²¹⁵

4. The following victims named in Incident #13, above, have filed a civil lawsuit in connection with that incident: [REDACTED], [REDACTED], and [REDACTED]. This lawsuit was filed against Roger, Barbara and Donald Barnett in the Superior Court of Cochise County.²¹⁶ The named defendants are Roger Barnett, his wife Barbara, and Donald Barnett. The plaintiffs’ lawsuit is based on tort law claims of assault, battery, false imprisonment, negligence, gross negligence and intentional infliction of emotional distress.²¹⁷ The plaintiffs in this case are seeking damages of at least US\$200,000, punitive damages and other relief granted by the Court.²¹⁸ The case is currently in the discovery process in which depositions and exchange of documents between the parties is still ongoing. No trial date has been set.²¹⁹

Respectfully submitted,
S. James Anaya; Leonardo Alvarado
Legal Representatives of the Petitioner, Border Action Network

²¹⁰ *Plaintiff’s Motion to Proceed under Fictitious Names and Protective Order*, June 10, 2005, Case no. CIV-05-157-TUC-JMR, (D. Ariz. Mar. 4, 2005).

²¹¹ *Plaintiff’s Motion for Entry of Confidentiality Order*, June 10, 2005, Case no. CIV-05-157-TUC-JMR, (D. Ariz. Mar. 4, 2005).

²¹² See [REDACTED] v. *Barnett* (Super. Ct. Ariz. Nov. 26, 2004), at 4 (attached as Appendix NN).

²¹³ See *Id.*

²¹⁴ See *Petition*, supra note 100, at para. 48.

²¹⁵ Communication from Jesús R. Romo Véjar, Attorney for the Plaintiff, August 18, 2005.

²¹⁶ [REDACTED] v. *Barnett*, CV 200400779 (Super. Ct. Ariz. Nov. 26, 2004). The named plaintiffs in the suit are [REDACTED] and [REDACTED] on behalf of their children [REDACTED] and [REDACTED]; and [REDACTED] and [REDACTED] on behalf of their daughter [REDACTED]; and [REDACTED].

²¹⁷ *Id.* at 5.

²¹⁸ *Id.*

²¹⁹ Communication from Jesús R. Romo Véjar, Attorney for the Plaintiff, August 18, 2005.